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OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES ON THE PURCHASE OF BELLIGERENT SHIPS BY CITIZENS OF THE UNITED STATES.

ATTORNEY GENERAL'S OFFICE,
7th August, 1854.

SIR: Your letter of the 2d instant, communicating to me that of Mr. Crampton, the minister of Great Britain, calls for my opinion as to the actual state of the laws of the United States in regard to the following points:

"1st. With respect to the purchase, by citizens of the United States, of foreign ships of a belligerent power, more especially when such purchase is made in the ports of a third neutral country.

"2d. What documents a foreign ship, so purchased, must have on board, and with what formalities such ship must have complied, in order to entitle it to hoist the flag and enjoy the privileges of the country to which it has been transferred, especially before such vessel has entered the ports of such country.

"3d. What precautions are required by the law to secure the *bona fide* character of such transactions, and to prevent the neutral flag from being fraudulently used to cover ships, which are either the property of a belligerent, or are not the exclusive property of United States citizens."

For the purpose of satisfactorily replying to these questions, it will be necessary, not only to exhibit the actual state of the municipal law of this country, but also to show how far that law is founded on, and accords with, the law of nations. And the most convenient mode of doing this will be to begin with investigation of the principles of the public law as to the nationality of merchant ships in general, with more especial reference to the purchase, by neutrals, of the merchant ships of a belligerent.

Some publicists have denied that a ship must of necessity belong to any particular nation, and have assumed that it may belong to several nations or to none (Pinheiro-Ferreira, Manuel du Citoyen, tom. ii. p. 603); and that it is permissible to any body to navigate the sea, etiam a nullo principe impetratâ licentiâ. (Grotius de Jure Belli ac Pacis, ch. 5.)

I do not affirm or even admit such doctrine. I hold it impossible, legally speaking, that the property of any man should be without nationality, unless, possibly, in the exceptional case of the uncivilized occupants of some petty islet in the Pacific or Indian sea, or some barbarous tribe of Asiatic or African savages beyond the pale of international law. Such a pretension is inadmissible by the law of nations, because contrary to the very nature of man, which seeks sociality of relation, and because, unless men be grouped into political societies, there can be no guaranty of law, nor assurance of positive and effective authority. Such a pretension is least of all admissible in regard to the navigation of the ocean, the extent of which, and the inherent difficulty of subjecting it to a continuous and complete *surveillance*, create a peculiar exigency for bringing all ships, and those owning or navigating them, within the scope of some nationality, with a consequent responsibility to law, both public and municipal, which are unattainable without such nationality. (Ortolan, Diplomatie de la Mer, tom. i, p. 178.)

The law of nations, and common sense combine to require that every ship shall have a nationality, defined and evidenced in each case according to the municipal law of the particular nation to which the ship appertains.

Different states of the great republic of Christendom have estab-

lished different rules, according to the policy of each, by which to determine nationality of character. The conditions of distinction concern the ship, as whether constructed or not in the country, and the owners, officers, and crews, as whether domiciled in the country or not. In selecting and combining among these ingredients of national character, governments have applied more or less of rigor, according to their respective conditions. Great Britain and the United States, and in general, those countries which conceive themselves to possess elements of maritime power, and are ambitious to develope those elements, have attached particular privileges of legal capability to ships constructed in the country, and owned and manned by its citizens, or domiciled inhabitants, without absolutely excluding the purchase and ownership of vessels of foreign construction. Local laws of this class, and their consequences, are fully recognized by numerous international conventions, as well by the general public right, of all the states of Europe and America. (Ortolan, ubi supra, lib. ii, ch. 9.)

But there is nothing in the law of nations, which requires that a ship, in order that she may enjoy all the benefits of nationality, should have been constructed in a particular country, or which negatives the general right of a nation to purchase and to naturalize the ships of another nation.

On the contrary, the laws of Spain, Portugal, Austria, or other countries of continental Europe, and of most of the new states of America, have long permitted the purchase of foreign ships, and admitted them, under certain conditions, to the right, and to the correlative duties, of complete naturalization. (Hautefeuille, Droits et Devoirs des Nations Neutres, tom. iv, p. 30; Ortolan, ubi supra, tom. i., p. 184, note); and such at the present time, but of recent introduction, is the law of Great Britain. (Act of 12 and 13 Vict. ch. 29.)

Since the public treaties, which make stipulations as to the conditions of existence and the means of proof of the nationality of merchant ships, either refer to the laws of each country on this point, or in some cases adopt and repeat them, it follows that the positive laws of this class, peculiar to each state, enter into the domain of

international right, and compose integral parts thereof. (Ortolan, ubi supra, tom. i, p. 202.)

This doctrine covers the purchase and naturalization of ships, not less than the other sub-divisions of the general subject matter.

Thus, by the treaties between France on the one side, and the republics of New Grenada and Bolivia, on the other, it is agreed to admit reciprocally, as national, all ships, wheresoever constructed, which are, in good faith, the property of the respective citizens of the contracting states.

So, also, the United States, in favor of nations deficient in maritime resources, have in several instances agreed that a ship, the *bona fide* property of, and commanded by, a citizen of the country, shall be deemed national, though her construction and her crew be foreign, as in the cases of Venezuela, Peru, Bolivia and Ecuador.

On the other hand, in other treaties we have refused to concede nationality, so far as regards privileges of commercial reciprocity, unless to ships of home construction, as in the case of Hanover.

The general principles, thus explained, apply alike to the proof and to the facts of nationality. Each nation has the right to prescribe for itself convenient rules on this point. Belligerent nations have sometimes undertaken to impose their own regulations upon the neutral. (Abreu, Tratado de Presas, chap. 5, s. 3, no. 2,); but their pretensions in this respect are now almost universally denied; for the neutral owner is rightfully subject only to the laws of his own sovereign. (Valin, Comment. sur l'Ordain. de la Marine, art. v, tit. 9, t. 3; Martens, Des Armateurs, ch. 2, s. 21, note *m*; Massé, Droit Commercial, tom. i, l. ii, ch. 2, s. 2, a. 5, no. 309; Hautefeuille, ubi supra, tom. iv, p. 24; Rayneval, De la Liberté des Mers, tom. i, p. 76.)

This question is one of evidence only. The belligerent is not to be defrauded by simulated nationality and neutrality. On the other hand, the belligerent cannot be suffered to dictate arbitrary means of proof. And there is no serious difficulty on this point, as we shall see hereafter; because the rules of evidence and of logical proof, are in substance, the same in all parts of Christendom.

It remains only to consider how far, if at all, the right which the law of nations concedes to each country, of determining, for itself,

the conditions of the nationality of merchant ships, is modified by the state of war.

It is true, that the prize regulations, occasionally issued by some belligerent nations, have undertaken to prescribe a limitation, in time of war, of the right to purchase, naturalize and neutralize foreign ships, to the effect, that in order to exempt from capture, in the hands of a neutral, a merchant ship purchased from the belligerent, it must be shown that she was so purchased before the existing war, or else after capture and lawful condemnation. (Hubner, De la Saisie des Batimens Neutres, tom. i, pt. 2, ch. 3, s. 10, no. 4.)

France, by the prize regulations of July 23d, 1704, art. 7, (Lebeau, Nouveau Code des Prises, tom. i, p. 332,) and by those of July 26th, 1778, art. 7, (Lebeau, tom. iv, p. 342,) enacted that no vessel of enemy's construction, or which had been at any time of enemy's ownership, should be reputed neutral, without proof that the sale or cession of them to the neutral owner, was made before the commencement of hostilities. (Merlin, Répertoire, Prise Maritime, s. iii, art. 3, p. 144).

Russia, on the other hand, at all times just in her appreciation of neutral rights, has, in her wars with Turkey, where the question is a practical one, admitted that a ship of belligerent construction, when it has become the property, *bona fide*, of a neutral, though purchased by him after the commencement of war, is not subject to molestation. (Hautefeuille, ubi supra, tom. iv, p. 28, note.)

The injustice and unreasonableness of making any distinction, in this respect, between ships and any other species of property, was long since indicated, (Lampredi, del Commercio dei Popoli neutrali in Tempo di Guerra, pt. i, s. 12, not.); and this belligerent encroachment on the sovereignty and the rights of neutrals, notwithstanding that it continues to be asserted by some states, is rejected by the most authoritative writers on the public law of Europe. (See Hautefeuille, ubi supra, tit. xi, ch. 2).

The exercise of commerce by every nation is one of the incidents of its sovereignty. The sovereign rights of a particular nation are not to cease whenever any two other nations choose to go to war. The neutral state is to conduct impartially between the belligerents,

but its commerce remains free, with respect to them, and to each of them; that commerce is without limitation, saving only the restrictions as to contraband of war, and places besieged, blockaded or invested; and thus restricted, it extends in principle to all the possible objects of mercantile intercourse.

No government has a right to contest the validity of the sale of a ship, on the pretence of its having been, at one time, belligerent property. To undertake to do this, is to usurp a jurisdiction over the business of other nations; it is to derogate from their independence; it is a mere abuse of force, which a strong nation may impose on a weak one, but which every strong nation should indignantly repel as it repels the pretension of the exclusive dominion of the sea by any one state.

The assumed right of a belligerent to annul sales of its enemy's ships to neutrals, is founded on the allegation that some of such sales may be simulated and fraudulent. But the fear of collusion is applicable to other property as much as to ships. And if the assumed consequences be admitted, then it follows that all goods, of the growth or produce of a country at war,—nay all other goods which have, at any time, in the progress of the war, belonged to that country,—are subject to capture and condemnation in the hands of the neutral nation; and we are thus brought to the precise state of things which produced the last war between Great Britain and the United States.

That this is the inevitable tendency of the doctrine is made plain by inspection of the adjudications on this point, in the admiralty Courts of England, which fully recognize the soundness of the position that no distinction in this respect, can be made between ships and other objects of ownership and of commercial exchange.

In a very recent publication on the law of nations, the author, speaking of his own country, says: "It cannot be denied that the common law of England has hitherto been, to a certain extent, like the territory in which it prevails, of an insulated and peculiar character." (Phillimore, International Law, pref. p. xi.) That is true, and serves, in part, to explain the fact that no Grotius or Vattel has yet appeared in England, and that the work of highest

authority on the law of nations, in the English language, was written by an American, (Wheaton). The so called "Treatise on the Law of Nations" by Chitty is but a compilation of the "insulated and peculiar" belligerent code of England.

Within a few years, however, the study of the law of nations, with higher and broader views, in England, is evinced by the publication of the works of Wildman, Reddie, Polson, Manning, Phillimore and others.[1] Each of these works, of course, has its merits; and that of Wildman particularly so; but none of them can be received unreservedly, as authority, because none of them are exempt from the bias of local law, foreign policy, pretensions or purposes of Great Britain.

We, in the United States, of the legal profession, cannot be charged with any want of respect for the courts and the jurists of England; on the contrary, their municipal law is, in the substance, our own, and we receive their decisions, on points of the common law, and of equity, and of local admiralty law, and read their books, with the same deference, as if they possessed legal authority among us. But, the moment we pass beyond the limits of mere municipal law, this relation of the jurisprudence of the two countries undergoes change. Then we perceive that our entire political history, nay, our very existence as a people constitutes a permanent and solemn protestation against the public law of England, her prize code, and what some of her jurists are pleased to conceive and write of, as the law of nations. We are constrained to observe the fact, that the doctrines of public law, received in Great Britain, especially regarding maritime rights, are not seldom in conflict with prevalent notions in all the rest of Europe. Of course, those doctrines are not entitled to conclusive authority as law, or paramount weight of consideration, with us; nay, they require to be watched with distrust, as being, perhaps, devices of peculiar national policy, rather than received truths of universal justice and right.

I recognize, with gratification, however, that, on this particular subject, the local law of Great Britain approaches to, if it does not

[1] Since the preparation of this opinion, a comparatively large number of works of circumstance on branches of the maritime law, have appeared in Great Britain.

absolutely reach, the rules of general reason. It is correctly stated by Wiseman, almost in the words of Lord Stowell, as follows:

"The title of neutral vendee to a merchant vessel, sold by the enemy in time of war, is valid, where the property is *bona fide* and absolutely transferred, so as to divest the enemy of all future interest in it. There have been cases of merchant vessels driven into ports out of which they could not escape, and there sold, in which, after much discussion and some hesitation of opinion, the validity of the purchase has been sustained. But a belligerent is justified in enforcing such rules, as reason and common sense suggest, to guard against collusion, and to enable it to ascertain as much as possible that the enemy's title is absolutely and completely divested. * * Anything, tending to continue the interest of the enemy, vitiates the contract altogether: to be valid, the sale must be absolute and unconditional. * * When a vessel is purchased from the enemy, by agents in the enemy's country * * it must be shown by proper documents that the agent was legally authorized to make the purchase." (International Law, vol. iii, pp. 89, 90. See the cases of *The Sechs Geschwistern*, 5 C. Rob. 100; *The Minerva*, 6 C. Rob. 399; *The Argo*, 1 C. Rob. 158.)

This text book, and the adjudications on which the text is founded, concur in opinion, that the only question to be investigated, in the case of a neutral ship, purchased from the belligerent, is the *bona fides* of the transaction. That is undoubtedly the rule. (Kluber, Droit des gens, s. 243; Rayneval, Droit de la Nature et des Gens, l. iii, ch. 14, 15.)

But a *dictum* of Lord Camden's, that a ship cannot change her character *in transitu*, and which has been expanded by Lord Stowell into a body of doctrine, cannot be suffered to pass without challenge, because, instead of investigating the question of *bona fides* in a case of sale *in transitu*, it assumes the fact of such sale, whether of ship or goods, as conclusive evidence of *mala fides*. (The Danckebaar Africaan, 1 C. Rob. 108; the vrow Margaretta, 1 C. Rob. 376; the San Frederick, 5. C. Rob. 129; the vrow Anna Catharina, 5 C. Rob. 161; the Abby, 5 C. Rob. 251.) I am not aware that the doctrine has received the formal sanction of the courts of

the United States. It is referred to with approbation, on two occasions, by Mr. Justice Story, (the *Ann Green*, 1 Gall. 274–291; the *Francis*, 1 Gall. 445–449;) but those allusions were dicta merely in argument, not called for by the decision in either case; and when, afterwards, one of the cases came before the Supreme Court of the United States, it appeared that there was no actual sale of the property in dispute, but only an unexecuted purpose of selling, and, of course, no question was made as to the effect of a sale *in transitu*. (The *Francis*, 8 Cranch, 359.) It remains a debatable point for consideration hereafter, if it should ever be raised before the Supreme Court.

This doctrine seems to be a remnant of the old theory of maritime prize, which assumed that a belligerent has a vested right by the declaration of war in all sea-borne private property of the other belligerent; that no such property can be the subject of lawful sale; that all contracts of sale touching belligerent property of any sort, though valid on land, yet are invalidated by the mere fact of such property being embarked on the ocean; that, in questions of maritime prize, all presumptions are in favor of the captor and against the captured; and that the neutral, as well as the belligerent, under which he claims, is to be assumed to be guilty of collusion and fraud in every commercial transaction.

This theory, in all its parts and relations, can no longer be admitted as the law of nations, still less as the law of the United States.

It cannot be repeated too frequently, that, upon the received and only true principles of public law, possession of property is presumption of ownership; that the belligerent who claims to take property from the neutral as if belligerent property, must prove his right so to do; that if he imputes wrongful neutral possession and *mala fides* in a contract of purchase and sale, he must prove it; that the state of war interrupts no contract of purchase and sale, or of transportation, as between neutral and belligerent, except in articles contraband of war; in a word, that neutral commerce, whether of ships or other things, except in regard to contraband of war and places invested, is just as free in war as in peace. Certainly, if judicial

conviction, positive law, and international policy, have not yet reached this point, they are tending, irrepressibly, towards it, both in Europe and America.

I doubt the soundness, therefore, of the assumed rule, that the mere fact of the sale of property by a belligerent to a neutral *in transitu*, is to be taken as proof, or even as presumption, of collusion and fraud. It may be cause of suspicion, without justifying conviction.

It remains only to consider how these questions are affected by acts of Congress.

The statutes of the United States recognize the following classes of sea-going vessels, namely:

1. Ships built in the United States, wholly owned by citizens thereof, employed in foreign commerce, which are entitled to be registered, and as such to enjoy all the rights and privileges conferred by any law on ships of the United States. (Act of December 31st, 1792, Stat. at Large, vol. 1 p. 287.)

Such a ship, of course, loses her privileges as a registered ship, in being sold to a foreigner, and is thereafter treated forever as foreign built, even though she be purchased back by the original owner or any other citizen of the United States. (Opinion of Attorney General, MSS., March 16th, 1854.)

2. Vessels built in the United States, and wholly owned by citizens thereof, employed in the coasting trade or fisheries, which are entitled to be enrolled and licensed as such, and to enjoy all the privileges, in their particular employment, conferred by law on vessels of the United States. (Act of February 18th, 1793, Statutes at Large, vol. 1, p. 305.)

3. Ships built in the United States, but owned wholly or in part by foreigners, which are entitled to be recorded, but not in general to be registered or enrolled and licensed. (Act of December 31st, 1792, ubi supra.)

4. Ships not built in the United States, but owned by citizens thereof: of which, more in the sequel.

5. Ships built out of the United States and not owned by citizens thereof.

6. Special provisions exist, in regard to the steamboats belonging to companies engaged in the transportation of ocean mails, as well as in regard to those navigating the bays and rivers of the country; which provisions relax the registry or enrolment laws, so as to admit ownership, under certain regulations, of persons not citizens of the United States.

The registry and enrolment statutes of the United States are in imitation of those of Great Britian *in pari materia*, and for the same objects, namely, to promote the construction and ownership of ships in the country, and to facilitate the execution of local or public law. They are classified with reference to the business they may pursue; their character is authenticated; and they enjoy various advantages, from which other vessels are wholly excluded, or to which these are partially admitted, according to the interests and policy of the government. (Abbott on Shipping, p. 58.)

It is with vessels of the fourth of the above classes, that we have more immediate concern.

It is observable, in the first place, that there is nothing in the statutes to *require* a vessel to be registered or enrolled. She is entitled to registry or enrolment, under certain circumstances, and, receiving it, she thereupon is admitted to certain duties and obligations. But, if owned by a citizen of the United States, she is American property, and possessed of all the general rights of any property of an American.

Secondly, the register, or enrolment, or other custom house document, such as sea letter, is *prima facie* evidence only, as to the ownership of a ship in some cases, but conclusive in none. The law even concedes the possibility of the register or enrolment existing in the name of one person, whilst the property is really in another. Property in a ship is a matter *in pais*, to be proved as fact by competent testimony like any other fact. (*U. S.* vs. *Pirates*, 5 Wheaton, 187, 199; *U. S.* vs. *Amedy*, 11 Wheaton, 409; *U. S.* vs. *Jones*, 3 Washington's C. C. R. 209; *Taggard* vs. *Loring*, 16 Massachusetts R. 336; *Wendover* vs. *Hogeboom*, 7 Johnson, 308; *Bass* vs. *Steele*, 3 Washington's C. C. R. 381; *Leonard* vs. *Huntington*, 15 Johnson, 298; *Ligon* vs. *New Orleans Nav. Co.* 7 Mar-

tin's R., new series, 678; Condensed Rep. vol. 4, p. 399; *Brooks* vs. *Bondsey*, 17 Pickering, 441.

To the same effect is the cause of adjudication in Great Britain. (See Neustra Señora de los Dolores, 1 Dobson, 290; *Robertson* vs. *French*, 4 East, 130; *Young* vs. *Brander*, 8 East, 10; *Frazier* vs. *Marsh*, 13 East, 238; *McIver* vs. *Humble*, 16 East, 174; *Frazier* vs. *Hopkins*, 2 Taunton, 5; *Sutton* vs. *Buck*, 2 Taunton, 302; *Smith* vs. *Fuge*, 3 Campbell, 456; *Recuss* vs. *Myers*, 3 Campbell, 475; *Fowler* vs. *Young*, 3 Campbell, 240; *Pirie* vs. *Anderson*, 4 Taunton, 652; Abbott on Shipping, p. 91.)

Thirdly, in regard to the condition of a vessel owned by an American, we adopt the law as it stood in Great Britain prior to the relaxation of her navigation system by the act of 12 and 13 Victoria, to the effect, that the only object of registry or enrolment is to confer certain privileges under the navigation and revenue laws. A foreign built unregistered ship might, even before the above mentioned act, have been owned by a British subject, and employed by him in any trade not interdicted to alien or other unregistered ships; but is meanwhile entitled to protection as the property of an Englishman. (*Long* vs. *Duff*, 2 Bos. & Pul. 209.)

This case, to be sure, is of a decision under the old registry acts; but it does not appear that any change, in this respect, is produced by the several registration acts codifying the old ones, passed in the successive reigns of George 3, George 4, William 4, and Victoria.[1] For the cases of *Palmer* vs. *Moxon*, 2 M. & S. 43, *Dixon* vs. *Ewart*, 3 Merivale, 322, and *Bergson* vs. *Gibson*, 4 Man., Gr. & Scott, 120, applied only to vessels registered as British, and claiming the privileges consequent on registry. There might, of course, be valid sale of an alien ship without registry, as also of a ship not pretending any right to registry, though British property. This conclusion follows from the case of *Benyan* vs. *Cresswell*, in which it was well argued, that there is nothing in those acts to compel registration; that it is only the means of obtaining certain benefits, some of which are attainable without it; and that it is a matter of choice with the owner whether to obtain registry or not; which reasoning was adopted

[1] This was written prior to the Act of 17 & 18 Victoria, c. 104, which is of August 10th, 1854.

by the court of Queen's Bench. "It was not necessary," says Lord Denman, "that there should be any registration at all." (*Benyan* vs. *Cresswell*, 12 Ad. & E. 899.)

Most of the cases above cited are, it is true, not of decisions as to national character *ex nomine;* but the doctrine established applies to both points; it having been adjudged that a register is not a document required by the law of nations, as expressive of a ship's national character. (*Le Cheminant* vs. *Pearson*, 4 Taunton, 367.)

The whole doctrine is fully and fairly stated by Greenleaf, the best authority on the law of evidence, as follows:

"The registry of a ship is not * * a document required by the law of nations, as expressive of the ship's national character. The registry acts are considered as institutions purely local and municipal, for purposes of public policy. The register, therefore, is not of itself evidence of property, except so far as it is confirmed by some auxiliary circumstance," &c. (Greenleaf's Evidence, vol. i, s. 494.)

It could not be otherwise decided, because numerous commercial treaties, between European or American states, make express stipulations as to proof of nationality, without requiring this to be done by register and enrolment; and as hereinbefore explained, there is no absolute rule of the law of nations, prescribing the evidence either of ownership or of national character, although the most common proof of national character is by passport or sea letter. (Hautefeuille, Nations Neutres, tom. iii, p. 450, tom. iv, p. 23.)

Finally, the act of Parliament of 12 and 13 Victoria, ch. 29, repeals so much of 8 and 9 Victoria, or of any other act, as provides that no ship shall be registered, except such as are wholly of the build of some part of the British dominions, and makes complete provisions for the registration of foreign built vessels, the property of subjects of Great Britain. There is nothing in this act, of course, to confine the right of purchasing foreign built ships to the time of peace, or to prevent the purchase of belligerent ships, as previously authorized by law, according to the decisions of the admiralty, and other courts of the kingdom.

This act to regulate the general condition of ships in Great Bri-

tain, and the measures regarding neutral commerce adopted by the British government, at the opening of the present war in Europe, contribute to show the modifications, which its laws and its policy have undergone of late years, on these points, greatly in its own interest, as well as in that of the peace and harmony of Europe.

This government has not, as yet, followed the example of that of Great Britain, so far as to admit foreign built vessels to registry; but such vessels may be lawfully owned by Americans.

Upon full consideration, therefore, of all the relations of the subject, there remains no doubt, in my mind, as to the right of a citizen of the United States to purchase a foreign ship of a belligerent power, and this, anywhere, at home or abroad, in a belligerent port, or a neutral port, or even upon the high seas, provided the purchase be made *bona fide*, and the property be passed absolutely and without reserve; and the ship so purchased becomes entitled to bear the flag and receive the protection of the United States.

As to the two secondary questions in Mr. Crampton's letter, namely, what documents a foreign ship, so purchased, must have on board, and what formalities she must have complied with, especially if transferred abroad, and what precautions are made requisite by law, to secure the *bona fide* character of the transaction:—

Lord Stowell has well said, that "A bill of sale is the proper title to which the maritime courts of all countries would look. It is the universal instrument of the transfer of ships in the usage of all maritime countries." (*The Sisters*, 5 C. Rob. 155; See Kent's Com., 130.)

In a word, the proof of the property of a ship is by rules of evidence, adopted generally in all courts of admiralty, adjudicating questions of international right, not materially differing in Great Britain and the United States.

At one period, it was customary for the government of the United States to issue sea letters and certificates of ownership to vessels owned by citizens of this country, whether the ship were, or were not, entitled to registry and enrolment. See the forms on this point in *Sleght* vs *Rhinelander*, 1 Johnson, 192 and 2 Johnson, 531.

The further issue of those particular documents, after the 30th of June, 1810, seems to be prohibited, by the act of March 26th, 1810, so far as regards vessels not entitled to registry and enrolment. 2 Stat. at Large, 568. But it is inexact to say, as the annotator on Abbott does, (Abbott on Shipping, by Story and Perkins, 63, note) that sea letters and certificates of ownership "have become almost, if not altogether, obsolete," by the operation of this act. On the contrary, "sea letters or passports" may still be lawfully issued in the cases not forbidden by the act, and are by many of our treaties the only received evidence of the ownership and consequent nationality, of a merchant ship. E. g. Colombia, art. 19; Central America, art. 21; Venezuela, art. 22; Chili, art. 19; Mexico, (1831), art. 23; Brazil, art. 21; New Grenada, art. 22.

Similar engagements occur in some of the older treaties of the United States with European states; as for instance, in that of 1795 with Spain; and the articles of this treaty have been the subject of important adjudications, which conclusively show that the neutral character of a ship may be sustained, without her having on board either register, sea letter or passport. (*The Pizarro*, 2 Wheaton, 227; *The Amiable Isabella*, 6 Wheaton, 1; *The Nereide*, 9 Cranch, 388.)

The question, of what particular documents, if any, shall be issued from the Treasury or State Department, to a foreign built ship, lawfully owned by a citizen of the United States, in the absence of any special legislation on the subject, seems to me a proper one for the consideration of the Executive and of Congress.

I am, very respectfully,

C. CUSHING.

HON. WM. L. MARCY,
Secretary of State.